

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 519.

THE UNITED STATES, APPELLANT.

vs.

ROBERT A. LAUGHLIN.

APPEAL FROM THE COURT OF CLAIMS.

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1 I. *Petition and Exhibits A and B. Filed December 11, 1916.*

In the Court of Claims of the United States.

ROBERT A. LAUGHLIN, CLAIMANT, }
vs. } No. 33692.
THE UNITED STATES. }

Claimant's petition.

To the Honorable the Chief Justice and Judges of the Court of Claims of the United States:

The petition of the claimant, Robert A. Laughlin, respectfully represents:

1. That he is a citizen of the United States, residing in Los Angeles County, State of California, and that he is the sole owner of the claim hereinafter stated, no part of which has ever been sold, assigned, or discharged.

2. That on the 20th day of November, 1878, claimant purchased from the United States, through its duly authorized officers, at the United States land office at The Dalles, Oregon, a certain tract of public land, described as follows, to wit: The south half of the northwest quarter and the north half of the southwest quarter of section 33, township 5 south, range 12 east, Oregon, the said purchase being known and designated as cash entry No. 106, The Dalles, Oregon.

3. That the said tract of land contained one hundred and sixty (160) acres, and the price fixed therefor by law was one dollar and twenty-five cents (\$1.25) per acre; but nevertheless the said officers of the United States required of and exacted from claimant two dollars and fifty cents (\$2.50) per acre, or the total sum of four hundred (\$400) dollars, which said purchase price was two hundred (\$200) dollars in excess of the amount claimant was lawfully required to pay for said land.

4. That the assigned reason for requiring of the claimant payment at the double minimum rate of two dollars and fifty cents (\$2.50) per acre when purchasing this land was on account of the grant made by the act of July 2, 1864 (13 Stats., 365), which act made a grant of the *odd-numbered sections* within twenty miles on each side of the line of said road as *definitely located* through the States, and of the *odd-numbered sections* within forty miles on each side of the line of said road as *definitely located* through the Territories of the United States, and which act provided that "the reserved alternate sections shall not be sold by the Government at a price less than two dollars and fifty cents (\$2.50) per acre when offered for sale."

5. That the tract purchased by claimant was not then and never has been a part of a reserved alternate section within the Northern Pacific land grant, because (a) the said grant was not then and never

has been definitely located opposite the land in question, and (b) the purchase was of part of an *odd-numbered section* that was granted to aid in the construction of the railroad.

6. That under the provisions of the act of Congress approved March 26, 1908 (35 Stat., 48), claimant was and is entitled to the repayment and refund of the said two hundred (\$200) dollars paid by him in excess of the lawful requirements as aforesaid; that claimant duly made application to the Secretary of the Interior for the return of the excess of one dollar and twenty-five cents (\$1.25) per acre erroneously charged him when making purchase of this land, but his application was denied by the decision of the Secretary of the Interior of June 16, 1913, it being therein held that the tract was within the limits of the grant as fixed on the definite location of the road, and that the lawful price of the land was two dollars and fifty cents (\$2.50) per acre.

7. Thereafter, on July 16, 1913, claimant filed in this court a petition in cause No. 32549, praying judgment against the United States in the sum of two hundred (\$200) dollars on the ground that said sum had been unlawfully required of him when he purchased the above-described land.

8. That it was thereafter found that the finding of the Secretary of the Interior of June 16, 1913, that this land was within the limits of the grant on the definite location of the road was erroneous, and for that reason claimant, on March 20, 1916, moved a dismissal of his said petition to the end that the case might be reopened in the Interior Department and a readjudication had by that department upon a proper statement of the facts.

9. That on April 3, 1916, claimant's said petition was dismissed; whereupon he filed with the Secretary of the Interior a motion to reopen his case and readjudicate it with proper findings of fact.

10. That said motion to reopen the case was duly granted, and claimant's application for refund of the excess improperly required of him was the subject of departmental decision of July 22, 1916, wherein it is found that—

4 “No map of definite location was ever filed as to this particular portion of the company's road, it was never constructed, and the grant as to it was forfeited by the act of September 29, 1890; 26 Stats., 496.”

But the Interior Department, nevertheless, adhered to its denial of the application for repayment, on the authority of two prior departmental decisions, and, without reaffirming the correctness of said decisions, said: “The department does not feel warranted in disturbing such long-established rule of adjudication,” a copy of which decision is hereto attached, marked “Exhibit A.” and made a part of this petition.

11. For cause of action herein claimant alleges:

1. That the Northern Pacific granting act of July 2, 1864, *supra*, did not increase in price other than the *even-numbered* sections, the grant being of the *odd-numbered* sections.

2. That there can be no alternate reserved sections under this grant until the odd or granted sections are fixed or located by the definite location of the road.

3. That the map of general route did not fix or locate the grant; that no rights were acquired by reason of the filing of said map, and that the lands, both odd and even, remained subject to disposition, unaffected by the grant, until the definite location of the line of road opposite thereto.

4. That the line of the Northern Pacific Railroad was never definitely located or constructed opposite the land purchased by the claimant, and for this reason the grant appertaining to such unconstructed portion of the road was forfeited by an act of Congress.

5. That the executive order of withdrawal made by the Interior Department upon the filing of the map of general route specifically limited the increase in price to the *even*-numbered sections within the limits of such withdrawal, a copy of which said order of withdrawal is hereto attached, marked "Exhibit B," and made part of this petition.

And that there is due and owing to the claimant from the United States, by reason of the premises and by virtue of said act of March 26, 1908, *supra*, the sum of two hundred (\$200) dollars, exclusive of all set-offs, counterclaims, and just grounds of defense on the part of the United States.

Wherefore claimant prays judgment against the United States in the sum of two hundred (\$200) dollars and for all proper relief in the premises.

ROBERT A. LAUGHLIN,

Claimant,

By WM. R. ANDREWS,

Attorney in fact.

WM. R. ANDREWS,

Attorney for Claimant.

F. W. CLEMENTS,

Of Counsel.

DISTRICT OF COLUMBIA, ss.:

I do solemnly swear that I am the attorney of record and in fact for the person named as claimant in the foregoing petition; that I have read the same and know the contents thereof; and that the facts therein stated are true, according to my information and belief.

WM. R. ANDREWS.

Subscribed and sworn to before me this 11th day of December, A. D. 1916.

[NOTARIAL SEAL.]

GEO. E. TERRY,

Notary Public, D. C.

EXHIBIT "A."

DEPARTMENT OF THE INTERIOR.

Washington, July 22, 1916.

D—22436.

Ex Parte ROBERT A. LAUGHLIN.

"M."

The Dallas cash entry 106.

Application for repayment denied.

Motion to reopen case.

Robert A. Laughlin has filed a motion requesting a readjudication of his application for the return of an alleged excess of \$200 paid by him in connection with preemption cash entry No. 106, the Dalles, Oregon, embracing the S. $\frac{1}{2}$ NW. $\frac{1}{4}$ and NW. $\frac{1}{2}$ SW. $\frac{1}{4}$, sec. 33, T. 5 S., R. 12 E., W. M. The matter has been orally argued.

The department, by its decision of June 16, 1913, affirmed the action of the Commissioner of the General Land Office dated October 25, 1912, denying the application. The motion calls attention to the fact that at the time of the previous decision the department was under a misapprehension as to the facts. The Commissioner of the General Land Office has made a full report dated May 11, 1916, setting forth the facts *in extenso*.

The land involved is part of an odd-numbered section within 40 miles of the general route of the Northern Pacific Railroad down the Columbia River, being the branch line authorized by section 1, act of July 2, 1864 (13 Stat., 365). It was embraced in homestead entry No. 1260 made by Jacob Deen June 15, 1869, which entry was canceled upon relinquishment October 2, 1871. August 13, 1870,

the railroad company filed its map of general route, and by order of February 9, 1872, the lands in this township were withdrawn from other disposition. Laughlin alleged settlement February 1, 1876, filed his declaratory statement May 2, 1876, cash entry being made November 20, 1879, upon which patent was issued October 19, 1881. No map of definite location was ever filed as to this particular portion of the company's road; it was never constructed; and the grant as to it was forfeited by the act of September 29, 1890 (26 Stat., 496).

It is earnestly insisted that, as no map of definite location was filed, the road never constructed, and the grant forfeited, the land never was within the grant to the railroad company, and that therefore the price of the land should have been minimum instead of double minimum.

The contentions of the applicant are foreclosed against him by the department's prior decisions in the cases of James S. Elliott, 25 L. D., 309, and William F. Brown, 35 L. D., 177, and the depart-

ment does not feel warranted in disturbing such long-established rule of adjudication.

The motion is accordingly denied.

(Signed)

ANDRIEUS A. JONES,
First Assistant Secretary.

EXHIBIT "B."

FEBRUARY 14TH, '72.

Register & Receiver, Oregon City, Oregon.

GENTLEMEN: I transmit herewith a diagram showing the forty-mile limits of the Northern Pacific Railroad in your district, authorized by the act of Congress of July 2nd, 1864, and by direction of the Secretary of the Interior you are requested to withhold from sale or location, preemption or homestead entry, all the odd-numbered sections of public lands falling within said limits.

8 You will also increase the price to \$2.50 per acre, the even-numbered sections within these limits and dispose of them at that ratability and under the preemption and homestead laws only. No private entry of the same being admissible until the lands have been offered at the increased price.

This order will take effect from the date of its receipt by you, and you are requested to acknowledge without delay the time of its receipt.

Very respectfully,

WILLIS DRUMMOND, *Commissioner.*

9 II. *General traverse.*

Court of Claims.

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THE UNITED STATES.	

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by rule 34.

10 III. *Argument and submission of case.*

On February 15, 1917, this case was argued by Mr. F. W. Clements for the claimant, and Mr. W. F. Norris for the defendants, and thereupon submitted.

11 IV. *Findings of fact, conclusion of law, and opinion of the court by Booth, J. Filed April 2, 1917.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of fact.

I.

On November 20, 1878, claimant made preemption cash entry No. 106, at the United States Land Office at The Dalles, Oregon, for a tract of public land containing 160 acres and described as the south half of the northwest quarter and the north half of the southwest quarter of section 33, township 5 south, range 12 east, for which he was charged by the proper officer of the United States the sum of \$400, or at the rate of \$2.50 per acre.

II.

The land entered by claimant is a part of an odd-numbered section within 40 miles of the general route of the Northern Pacific Railroad Company, as shown by the map of said general route filed in the Interior Department on August 13, 1870.

On February 14, 1872, the Interior Department issued an order withholding from disposition the odd-numbered sections of public lands within the limits indicated by said map of general route and increasing in price to \$2.50 an acre the even-numbered sections within said limits.

III.

No map of definite location of that portion of the proposed road of the Northern Pacific Railroad Company opposite claimant's land was ever filed; the road opposite thereto was never constructed, and the grant as to it was forfeited by the act of Congress of September 29, 1890 (26 Stat., 496).

IV.

Claimant applied to the Secretary of the Interior under the act of March 26, 1908 (35 Stat., 48), for the refund of \$200 of the purchase money paid by him for said land, alleging that the lawful price thereof was \$1.25 per acre; but the Secretary of the Interior, on July 22, 1916, denied said application on the ground that the questions of law presented by claimant had been previously adjudicated by the Interior Department adversely to his contentions.

Conclusion of law.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is entitled to recover the sum of \$200. It is therefore ordered and adjudged by the court that the claimant recover of and from the United States the sum of two hundred dollars (\$200).

Opinion.

BOOTH, *Judge*, delivered the opinion of the court.

This is a suit under section 2 of the act of March 26, 1908 (35 Stat. L., 48) for the repayment of an alleged excess charge exacted of the plaintiff at the time he made a preemption entry under the general land laws of the United States.

The act of 1908 provides as follows:

"SECTION 1. That where purchase moneys and commissions paid under any public-land law have been or shall hereafter be covered into the Treasury of the United States under any application to make any filing, location, selection, entry, or proof, such purchase moneys and commissions shall be repaid to the person who made such application, entry, or proof, or to his legal representatives, in all cases where such application, entry, or proof has been or shall hereafter be rejected, and neither such applicant nor his legal representatives shall have been guilty of any fraud or attempted fraud in connection with such application.

"SEC. 2. That in all cases where it shall appear to the satisfaction of the Secretary of the Interior that any person has heretofore or shall hereafter make any payments to the United States under the public-land laws in excess of the amount he was lawfully required to pay under such laws, such excess shall be repaid to such person or to his legal representatives.

"SEC. 3. That when the Commissioner of the General Land Office shall ascertain the amount of any excess moneys, purchase moneys, or commissions in any case where repayment is authorized by this statute, the Secretary of the Interior shall at once certify such amounts to the Secretary of the Treasury, who is hereby authorized and directed to make repayment of all amounts so certified out of any moneys not otherwise appropriated and issue his warrant in settlement thereof."

The issue is more clearly discernible from a sequential statement of the agreed facts and the history of the case in its passage through the Land Office.

The plaintiff's original entry was made on November 20, 1878, in the land office at The Dalles, Oreg. The purchase embraced a hundred-and-sixty-acre tract composed of two eighties in separate quarters of an odd-numbered section, for which the land office officials fixed a price of \$400, or \$2.50 per acre, under the preemption

laws. All of the above land was part of an odd-numbered section included in the grant of public lands to the Northern Pacific Railroad Co. by the act of July 2, 1864 (13 Stat. L., 365). The Northern Pacific Railroad Co., at the time of the grant, contemplated the building of a line of road between Walla Walla, Wash., and Portland, Oreg., and to this end accepted the foregoing grant, filed in the Land Office in the year 1870 what is familiarly known as its map or line of *general route*, whereupon the commission withdrew, by proper executive order, dated February 14, 1872, all the lands embraced within the railroad grant from public entry. The railroad company subsequently abandoned the route, never filed a map of *definite location*, never constructed any portion of the projected line, and the Congress of the United States, by the act of September 29, 1890 (26 Stat. L., 496), forfeited the grant. It is not denied that said proposed line, as shown by the map of *general route*, is coterminous with the land here in controversy, nor that the plaintiff did not in good faith make the entry and was fully qualified to do so. The plaintiff applied to the Secretary of the Interior for a refund of \$200, or \$1.25 an acre, under the act of March 26, 1908, insisting that, under the law, the land was public, subject to preemption entry, and that he had been illegally charged this excess amount. The Secretary denied the application on June 16, 1913, predicated his denial upon a clear misapprehension of the true state of facts, for, in the course of the decision, it appears that the department treated the entry as one made within the primary or place limits of the grant to the railroad company ascertained from the map of *definite location* filed by the company.

The plaintiff then began suit in this court on the claim as erroneously prosecuted before the department, subsequently dismissing the same when the error of fact was discovered. A second application was then made to the department for repayment, in which claim it was positively shown that no map of *definite location* was ever filed by the railroad company, and notwithstanding this undisputed fact the department again refused a repayment on July 22, 1916, saying in part as follows: "The contentions of the applicant are foreclosed against him by the department's prior decisions in the case of Jesse S. Elliott (25 L. D., 309), and William F. Brown (35 L. D., 177) and the department does not feel warranted in disturbing such long-established rule of adjudication." Thus it appears that the plaintiff was again compelled to resort to this court for an adjudication of his claim. The long continued and consistent construction given to an ambiguous statute by the department of the Government charged with its administration is not to be overruled "except for cogent reasons." This principle of law is notoriously fundamental, but it can not be invoked in cases where a decision of the Supreme Court subsequently interposes and points out with precision the error of the same, especially so where it appears that the Congress recognized by the passage of remedial legislation the rights of claimants to prefer claims for illegal exactions subsequent to said decisions.

The plaintiff is entitled now and was entitled before the department to have his case adjudicated under the existing status of the law. He can not be legally foreclosed by reference to decisions without present applicability or by an apparent hesitancy to disturb rulings which upon reexamination possess no greater legal efficacy than age. As a matter of fact the decisions referred to are wholly inapplicable to the present issue. In the Elliott case repayment was applied for under the repayment act of June 16, 1880, the decision was rendered in October, 1897, and was clearly erroneous by the subsequent decision of the Supreme Court in *Nelson v. Northern Pacific Railway*, 188 U. S., 108. The Brown case followed the Elliott case, the decision being announced in September, 1906; again the act of June 16, 1880, was involved, and the land office very properly followed the decision of the Supreme Court in *Medbury v. United States*, 173 U. S., 492. The plaintiff herein preferred his claim under the act of 1908, a statute broader and much more comprehensive in its terms, a repayment act designed to afford relief to claimants, wherein it appears that any payment in excess of the amount lawfully required shall be refunded.

The case presents the single issue, Was the land entered subject to entry under the preemption laws in the face of the grant of the same lands to the railroad company? If so, the legal charge was one dollar and a quarter per acre. It is, of course, quite evident that if by filing the map of general route the railroad company acquired the full extent of its grant, each alternate odd section for twenty miles on each side of its proposed line, then the land entered by the plaintiff belonged to the company and the entry should not have been received at all, for it was not made until 1878 and the map was filed in 1870; keeping in mind that in any event the plaintiff's entry was part of an odd numbered section and not embraced within the even numbered sections reserved by the Government, which under the law could not be disposed of for less than two dollars and fifty cents per acre.

In the case of *Nelson v. Northern Pacific Railway*, *supra*, decided January 26, 1903, the Supreme Court had under review the granting act of July 2, 1864. In an exceedingly complete and exhaustive opinion, Mr. Justice Harlan went into the very phase of the controversy presented by this record; in fact, the case as there decided was presented to the court from a much more favorable attitude, in so far as the Government is now concerned, than the present one. The facts disclosed that the entryman made his entry subsequent to the filing by the company of its map of general route but prior to its one of definite location, and the court held that he could not be divested of his legal title to the land entered, notwithstanding the company completed its line and otherwise occupied the grant. The court said: "It results that the railroad company did not acquire any vested interest in the land here in dispute in virtue of its map of general route or the withdrawal order based on such map; and if such map was not free from preemption or other claims or

rights,' or was 'occupied by homestead settlers' at the date of definite location on December 8, 1884, it did not pass by the grant of 1864."

The lands here in question were under the foregoing decision public lands and open to entry under the public land laws up to the date of the filing by the railroad company of its map of *definite location*. As concisely stated in the Nelson case, "until definite location the land covered by the map of general route was a 'float'; that is, at large."

Judgment will be awarded the plaintiff for \$200. It is so ordered.

Hay, *Judge*; Downey, *Judge*; Barney, *Judge*, and Campbell, *Chief Justice*, concur.

15

V. Judgment of the court.

At a Court of Claims held in the city of Washington on the 2nd day of April, A. D. 1917, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the claimant and do order, adjudge, and decree that Robert A. Laughlin have and recover of and from the defendants, the United States, the sum of two hundred dollars (\$200.00).

By THE COURT.

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V. Defendants' application for and allowance of appeal.

From the judgment rendered in the above-entitled cause on the 2nd day of April, 1917, in favor of claimant, the defendants, by their Attorney General, on the 23rd day of May, 1917, make application for and give notice of an appeal to the Supreme Court of the United States.

HUSTON THOMPSON,
Assistant Attorney General.

Filed May 23, 1917.

Ordered: That the above appeal be allowed as prayed for.

By THE COURT.

May 23, 1917.

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In the Court of Claims.

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I, Sam'l A. Putman, chief clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact and conclusion of law filed by the court; of the opinion of the court by Booth, J.; of the judgment of

the court; of the application of the defendants for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this 24th day of May, A. D. 1917.

[SEAL.]

SAML. A. PUTMAN,
Chief Clerk Court of Claims.

(Indorsement on cover:) File No. 25986, Court of Claims. Term No. 519. The United States, appellant, *vs.* Robert A. Laughlin. Filed June 1st, 1917. File No. 25986.

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